

REMARKS

The present Amendment is in response to the Official Action mailed November 9, 2007. Claims 1-8 and 15 have been amended. Thus, claims 1-15 remain pending in the present application. The following sets forth Applicants' remarks pertaining to the currently pending claims and the outstanding action.

As an initial matter, Applicants respectfully thank the Examiner, as well as his Supervisor Examiner, for conducting the telephone interview of January 15, 2008, with Applicants' undersigned counsel. This discussion is mentioned in the Examiner's Interview Summary of January 24, 2008. In that discussion, each of the currently pending claims was discussed. Specifically, Applicants' counsel put forth arguments relating to why claims 1-7 should not be restricted from the present application, and made suggestions as to further amendments to independent claims 8 and 15 that could be made in order to overcome the rejections set forth in the outstanding Action. As will be discussed more fully below, the Examiner and his supervisor both agreed in principle to the subject matter of the present amendment. For this, Applicants are grateful.

With regard to previously withdrawn claims 1-7, Applicants note that such claims have been amended herein to once again refer to a retaining clip. While this is indeed what was intended in the originally filed claims, and also in the previous amendment, Applicants understand the Examiner's position that making such claims directed to an intervertebral disc replacement device essentially changed their scope somewhat from a retaining clip for use with such a device. In the present amendment Applicants have amended such claims to once again be directed to a retaining clip, albeit with certain limitations of the intervertebral disc replacement device remaining in the claims for illustrative purposes. The Examiner

agreed that because claims 1-7 were merely withdrawn in the action, the above-made amendments to such claims could be presented again in this Response. For the record, Applicants state that the intention of such claims is to a subcombination for a retaining clip. Because of reasons more fully discussed below, the limitations of the claim pertaining to the retaining clip are clearly not taught by the prior art, and as such, claims 1-8 should be considered and allowed.

With regard to the remainder of the Official Action, the Examiner rejected claims 8-15 under 35 U.S.C. § 103(a) as being obvious over the combination of U.S. Patent No. 3,278,107 to Rygg ("Rygg") and U.S. Patent Application Publication No. 2005/0033430 to Powers ("Powers"). Both of these references were previously cited by the Examiner in a previous Official Action. Applicants responded to that Action by submitting claim amendments to more clearly capture the present invention. Nonetheless, the Examiner was not convinced of the allowability of such claims.

With respect to independent claim 8, the Examiner essentially cited Rygg as teaching each and every one of the limitations of such claim, save for an enclosure. To support this limitation, the Examiner cited Powers. With respect to independent claim 15, which was added in response to an indication of the allowability of dependent claim 10 in the previous Action, the Examiner has withdrawn his indication of the allowability of the subject matter of dependent claim 10 (along with his indication of the allowability of dependent claim 11) in the present Action. In doing so, the Examiner cited Rygg as teaching an applicator having two arms with each one capable of holding a retaining clip. Pursuant to the aforementioned telephone interview, Applicants have submitted amendments herein which move both independent claims 8 and 15 into condition of allowance.

Specifically, independent claim 8 has been amended to require that a hook flange extend from a body member of the retaining clip in a first direction and that at least one lateral flange extend from the body member in a second direction coplanar with the body member. Furthermore, the first and second directions are claimed as being perpendicular to one another. This is clearly not taught in Rygg. Both the Examiner and his supervisor agreed that this is not taught in Rygg. In other words, even the combination of Rygg and Powers does not teach each and every one of the limitations of such claim. As such, independent claim 8, as amended, overcomes the obviousness rejection set forth in view of Rygg and Powers.

As is alluded to above, independent claim 1 has been amended to require similar limitations for the retaining clip as those set forth in independent claim 8. Thus, should the Examiner reconsider amended independent claim 1, he should not make an obviousness rejection of that claim in view of Rygg and Powers. Therefore, Applicants respectfully submit that independent claims 1 and 8, as well as their dependent claims 2-7 and 8-14, are allowable. A dependent claim which properly depends from an allowable independent claim is also allowable.

Finally, with regard to independent claim 15, Applicants once again note that such claim was added to capture the subject matter previously indicated by the Examiner as being allowable. As was discussed in the January 15<sup>th</sup> telephone interview, the intention of such claim was to clearly require the simultaneous removable securement of a first retaining clip to a first end of a first applicator arm and a second retaining clip to a first end of a second applicator arm. This is not taught in Rygg, where two clips are never shown simultaneously connected to what the Examiner considers to be first and second applicator arms. Both the Examiner and his supervisor agreed

that this was the case, but requested that an additional limitation be placed in the claim to make the simultaneous nature of the securement of the first and second clips to the first and second arms clearer. As such, Applicants have amended claim 15 to require the limitation that the second retaining clip be secured to a first end of the second applicator arm "while said first clip is removably secured to said first end of said first applicator arm." The Examiner and his supervisor both agreed that this captures the simultaneous nature of the assembly, and indicated that independent claim 15 constitutes allowable subject matter.

In light of all of the above, Applicants respectfully request allowance of each and every one of currently pending claims 1-15. Should the Examiner disagree, he is requested to contact Applicants' undersigned counsel to discuss the matter in lieu of issuing another written communication. Applicants wish to avoid any delay caused by any additional issues that could easily be dealt with during another telephone discussion. Thus, should the Examiner not believe that each and every one of the currently pending claim is allowable, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

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If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

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Respectfully submitted,

By 

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